

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10807 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
  2. To be referred to the Reporter or not? No
  3. Whether Their Lordships wish to see the fair copy of the judgement? No
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
  5. Whether it is to be circulated to the Civil Judge? No

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MESHANA DISTRICT PANCHAYAT

Versus

ND PRAJAPATI

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Appearance:

MR HS MUNSHAW for Petitioner

MR PH PATHAK for Respondent No. 1

SERVED for Respondent No. 2

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 11/12/96

ORAL JUDGEMENT

1. The petitioner Panchayat has moved this petition challenging the order of the Labour Court on restoration application dated 31st of May, 1994 as well as the original award in Reference No. 325 of 1990 dated 27th of May, 1993. By the impugned award, the workman is ordered to be reinstated in service with full back wages

by the Labour Court and immediately after the exparte award which was passed, beyond one month and nine days, the employer has approached the Labour Court for setting aside the exparte award and for restoring the application to file and that restoration application is unfortunately rejected by the Labour Court by the impugned order dated 31st May, 1994. Since the workman is admittedly made to suffer during the aforesaid period and has been systematically kept out of employment and is denied the benefits of the order of reinstatement granted to him by the Labour Court, as a condition to hearing the application for restoration, this Court directed the District Panchayat, Mehsana, to deposit amount of Rs. 10,000/- in this Court towards cost of the workman for granting the application of restoration and Mr. Hemant Munshaw has fairly stated to the Court that the aforesaid amount will be deposited in this Court within two weeks from today and that the workman shall be at liberty to withdraw the same without furnishing security and Registrar is directed to make the payment of the aforesaid amount in favour of the workman by account payee cheque unconditionally.

2. Virtually therefore this Court is called upon to decide the legality and validity of the order passed by the Labour Court on the restoration application dated 31st may, 1994 which was filed by the employer. The said application unfortunately came to be rejected by the Labour Court which has given rise to the present petition and this Court is required to consider as to whether restoration application ought to have been allowed in the facts and circumstances stated by the employer in the said application. Misc. Application No. 51 of 1993 was preferred by the District Panchayat for restoration of the Reference and for setting aside the ex parte award and for providing them opportunity of leading their evidence. It is such restoration application which is rejected by the Labour Court on the ground that the same was filed even beyond the period of limitation by one month and 9 days and that no legitimate reason just and reasonable cause was forthcoming for excusing and condoning the delay and that therefore the said application came to be rejected by the Labour Court.

3. In fact, a reference to the very order passed by the Labour Court in this behalf would be sufficient to establish that the management or the District Panchayat was not so lethargic or negligent as not to heed to the notice of the court but in fact no one remained present on behalf of the institution before the court and therefore the Labour Court has after recording evidence

of the workman proceeded to pass ex parte award. In fact, the demand of claim is accepted by the employer and reply to the said demand was to be filed but it appears that there was some lapse on the part of the District Panchayat in filing the reply which ultimately led to not opposing of the ex parte award. The delay caused in filing the application is admittedly of one month and nine days only as pointed out by the Labour Court itself and but for the failure to show sufficient cause as is found by the Labour Court, the application was required to be granted and the delay caused in filing the application was required to be condoned. In my opinion, the delay of one month and nine days cannot be said to be such gross delay which would disentitle an employer to produce its case before the Labour Court and to support its case by documentary evidence. No earthly reason is pointed by the Labour Court as to why it has taken too technical view of the matter and has not viewed the matter as broadly as required to be looked into by the Labour Court while considering the application of condonation of delay. It is unfortunate that the Labour Court has failed to apply the ratio of the decision of the Supreme Court in the case of COLLECTOR, LAND ACQUISITION, ANANTNAG v. MST. KATIJI reported in AIR 1987 1353, wherein the Supreme Court has referred to following relevant factors, which shall have to be kept in mind, more particularly when infirm aged tenant has applied for setting aside ex parte decree and for restoration of suit to file. The relevant factors stated by the Apex Court and blissfully ignored by the appellate bench are as under :

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of injustice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be

preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

The factors which are required to be kept in mind by the court of law for the purpose of condoning delay as to whether sufficient cause is made out or not and the Hon'ble Judge has observed that sufficient cause is required to be taken liberally and liberally construed. In the present case, in my opinion, sufficient cause was made out which would require the Labour Court to condone the delay and to grant the restoration application and to permit the employer to lead the evidence in rebuttal of the evidence made by the workman.

4. In the result, firstly the judgment and order of the Labour Court which is an ex parte award is quashed and set aside and the judgment and order of the Labour Court dated 31st May, 1994 is also quashed and set aside and the Labour Court is directed to restore the Reference to file. This Court directs the Labour Court to decide the Reference in accordance with law. The employer is directed to submit the written statement within two weeks from today before the Labour Court and the Labour Court shall proceed to record evidence of the workman and to record any other evidence that he wants to lead and thereafter to provide opportunity to the employer to produce their evidence. The Labour Court shall thereafter decide the Reference in accordance with law and shall dispose of the same within a period of six months. However, the aforesaid exercise shall be undertaken subject to the order that the petitioner panchayat shall deposit the amount of Rs. 10,000/- in this Court within two weeks from today which the workman shall be at liberty to withdraw the same as directed hereinabove.

5. In the result, this Special Civil Application partially succeeds. The judgment and order of the Labour Court below restoration application dated 31st May, 1994

is quashed and set aside and the Reference No. 325 of 1990 is ordered to be restored to file after following the procedure as set out hereinabove. The Labour Court is directed to decide the Reference in accordance with law within a period of six months. Rule is partially made absolute to the aforesaid extent only. There shall be no order as to costs.

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